



July 5, 2017

**VIA ELECTRONIC FILING**

(<https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate>)

**RE: Request for records under the Federal Freedom of Information Act**

Dear FOIA Officer:

In accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., the Sierra Club hereby requests access to and copies of specific public records in the possession of the United States Environmental Protection Agency (“EPA”), including EPA’s regional offices, concerning any and all sulfur dioxide (“SO<sub>2</sub>”) air dispersion modeling analyses conducted and submitted in conjunction with the Data Requirements Rule (“DRR”) for the one-hour Sulfur Dioxide Primary National Ambient Air Quality Standard (“NAAQS”), 80 Fed. Reg. 51,052 (Aug. 15, 2015). Specifically, we respectfully seek copies of the following records, received by EPA between May 9, 2017 and the date of this Request:

- I. SO<sub>2</sub> modeling analyses conducted or prepared in conjunction with/pursuant to the DRR, including those conducted or prepared by EPA, states, industry, or other third parties;
- II. Related reports, correspondence, memorandum, or other records, including those which explain and/or summarize the modeling protocols and results; and
- III. Input and output files from the modeling analyses, including meteorological and building downwash files.

Please note, all files are specifically requested in electronic format. In any instance that the requested files are too large to provide via e-mail, the Sierra Club can provide a box.com link allowing for easy upload of the files directly to an electronic folder, or a physical hard drive onto which responsive records may be copied. Sierra Club is willing to coordinate with EPA on appropriate media for access to such files.

If you are able to provide some documents more rapidly than others, we ask that you please forward those documents as they become available for production. If you ultimately withhold any documents, please include in your response an explanation as to which documents or portions of documents, if any, may be privileged or exempt from this request and the justification for that privilege or exemption. If a document includes both exempt and non-exempt information, please

provide those portions of the document that are not specifically exempted from disclosure. Finally, if a document does not exist, please indicate that in your written response.

Finally, in accordance with the FOIA, Sierra Club requests a waiver of all fees in connection with this request. FOIA carries a presumption of disclosure, and FOIA's fee waiver provision was designed specifically to allow for the disclosure of requested information that is in the public interest without the payment of fees if disclosure "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *See* 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1).

The Sierra Club is a nonprofit organization founded in 1892 that has grown to include over 774,000 members nationwide. The Sierra Club's organizational mission is "to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives." One of the most important elements of this mission is to educate people on the effects of air pollution on the environment and human health, and Sierra Club has a long history of involvement in activities related to air quality and implementation of the SO<sub>2</sub> NAAQS under the Clean Air Act.

The Sierra Club's request for documents meets the two-pronged test for waiver of fees under FOIA. *See* 40 C.F.R. § 2.107(l)(2),(3). As to the first prong, disclosure of the requested records and information here is in the public interest because it will significantly contribute to the public understanding of the operations or activities of the government. Particularly, the subject of the requested records concerns the operations and activities of the EPA—specifically, activities related to its mandatory duties under the Clean Air Act to characterize air quality in order to effectively implement the 2010 SO<sub>2</sub> NAAQS. *See* 40 C.F.R. § 2.107(l)(2)(i). The information sought by the Sierra Club is not currently in the public domain and has meaningfully informative value to the public in their understanding of ambient air quality in their communities. *See* 40 C.F.R. § 2.107(l)(2)(ii). As such, the information will significantly contribute to the public's understanding of EPA actions required under the Clean Air Act to protect the public from serious harms due to SO<sub>2</sub> pollution. *See* 40 C.F.R. § 2.107(l)(2)(iii),(iv). The Sierra Club continuously works with volunteers nationwide to disseminate public and environmental health information about SO<sub>2</sub> emissions from coal plants and other large stationary sources. The Sierra Club's unique ability to reach a large cross-section of the affected public, its intention to effectively convey the requested information to the public, and its knowledge and expertise of SO<sub>2</sub> pollution, refined air dispersion modeling of SO<sub>2</sub> emissions, and coal-fired power plants, allows for the effective analysis and conveyance of the information to broad audience, thereby significantly contributing to the public understanding of air quality conditions in their communities and of EPA's activities to implement the 2010 SO<sub>2</sub> NAAQS in order to protect the public's health and well-being.

The information sought here will allow the public to determine how the modeled large sources of SO<sub>2</sub> pollution are impacting ambient air quality, including what levels of pollutants and emissions the EPA and state agencies allow from each source. Sierra Club has worked extensively under the 2010 SO<sub>2</sub> NAAQS at the state and federal level, all the way from promulgation of the rule, to initial area designations and infrastructure plans, and including litigation concerning the delay in implementing the standard. The requested information and materials will allow Sierra Club to create a more comprehensive public educational program regarding the SO<sub>2</sub> NAAQS, significantly contributing to the public's understanding of EPA's actions as to the continuing designation and implementation process for the standard. In addition, disclosure of the requested records will allow

Sierra Club to ensure that requirements under the Clean Air Act pertaining to implementation of the NAAQS are being met by states, affected sources, and the U.S. EPA. Clearly, there is great public interest in the release of the materials sought. The ability of the public to be informed about the government's operations and activities related to the SO<sub>2</sub> NAAQS and to EPA's mandatory duties under the Clean Air Act to characterize current ambient SO<sub>2</sub> air quality in their communities and implement the 2010 SO<sub>2</sub> health-based NAAQS is vital to effective public participation and protection of public health and clean air.

As to the second prong, Sierra Club's FOIA request also satisfies the requirement that the information is "not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(3). As a nonprofit, the Sierra Club has no commercial, trade or profit interest in the material requested. The Sierra Club will not be paid for, nor receive other commercial or economic benefits from the publication or dissemination of, the requested materials. In short, it is clear that the Sierra Club's FOIA request is "likely to contribute significantly to public understanding of the operations or activities of the government" and "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). In this case, a fee waiver is appropriate.

Please feel free to e-mail me at [zachary.fabish@sierraclub.org](mailto:zachary.fabish@sierraclub.org), or call me at (202) 675-7917, to discuss any aspect of this request. Thank you in advance for your assistance in this matter.

Sincerely,

/s/  
Zachary M. Fabish  
Staff Attorney  
The Sierra Club  
50 F Street NW, Eighth Floor  
Washington, DC 20009  
(202) 675-7917  
[zachary.fabish@sierraclub.org](mailto:zachary.fabish@sierraclub.org)